

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



Application No. 15565 of the District of Columbia Department of Administrative Services, pursuant to 11 DCMR 3108.1, for special exception under Sections 219*, 219.6 and 219.7 to establish a youth residential care home, to establish a facility for more than four persons within 1,000 feet of another community based residential facility, and to establish a facility for more than 15 persons as a residential treatment facility for 24 youths, basement through third floor, in an R-1-B District at premises 3050 R Street, N.W. (Square 1282, Lot 837).

HEARING DATE: October 9, 1991
DECISION DATES: November 6, and November 20, 1991

ORDER

PRELIMINARY PROCEDURAL MATTERS:

The subject application requests special exception approval to establish a youth residential care home (YRCH) and a community residence facility (CRF). The community residence facility is to be for more than fifteen persons ages 12 and under. At the public hearing on October 9, 1992, the Citizens Association of Georgetown (CAG or "the Association") opponents to the application, moved for dismissal of the application for the CRF. The Association maintains that the Board lacks jurisdiction over this special exception request because the relief requested is not permitted in the Zoning Regulations.

In its submission to the Board expressing opposition to the application, CAG states that there is no provision in the Zoning Code for a facility like the one proposed, with over fifteen juvenile residents to be located in an R-1 District. First, CAG argues that the proposed facility is not a CRF. The Association bases this argument on the analysis that follows.

The application was filed under 11 DCMR Section 219.7, which reads as follows:

In the case of a community residence facility, the Board may approve a facility for more than fifteen (15) persons, not including resident supervisors and their family, only if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location and if there is no other reasonable alternative to meet the program needs of that area of the District.

*Section 218 in the 1991 edition of 11 DCMR, Zoning.

The term "community residence facility" is defined in 11 DCMR 199.9 as: "a facility that meets the definition for and is licensed as a community residence facility under Chapter 34 of Title 22 DCMR "Public Health and Medicine", as that definition may be amended from time to time."

Title 22, Chapter 34, in turn, adopts the definition set out in 22 DCMR Section 3099.1, which reads, in relevant part, as follows:

Community residence facility - a facility providing safe, hygienic sheltered living arrangements for one (1) or more individuals aged eighteen (18) years or older (except that, in the case of group homes for mentally retarded persons, no minimum age limitation shall apply), not related by blood or marriage to the residence director, who are ambulatory and able to perform the activities of daily living with minimal assistance.

Because the proposed use is for more than 15 children under 12 years of age, rather than age 18 or older, the proposed use does not meet the definition of CRF. Therefore, the Board does not have jurisdiction to allow a special exception for this use, and the application should be dismissed.

Secondly, CAG argues that the proposed use is not a Youth Care Home. Title 11 DCMR 199.9 provides the following definition:

Youth residential care home - a facility providing safe, hygienic, sheltered living arrangements for one (1) or more individuals less than eighteen (18) years of age, not related by blood, adoption, or marriage to the operator of the facility, who are ambulatory and able to perform the activities of daily living with minimal assistance.

CAG argues that the severely emotionally disturbed children to be placed in the proposed residential treatment center are not, by definition, "able to perform the activities of daily living with minimal assistance" as the definition of youth residential care home states. To the contrary, these patients will require strict round-the-clock supervision in all of their daily activities. CAG bases this argument on the statements made by the applicant in its Certificate of Need Application at page 35-1. In that document the applicant states, "residential placement is one of the most restrictive interventions for children and youth and therefore must be judiciously used." Further, to be admitted to the proposed facility, the applicant will require

. . . documented evidence that the child has exhibited any of [sic] all of the following characteristics or symptoms

*Inappropriate self-care skills *Inability to build or maintain satisfactory relationships *Impaired or underdeveloped capacity for self-direction *Psychotic symptoms of the acute nature *Depressive behaviors interfering with normal daily living responsibilities *Suicidality *Violence committed against people, property, or animals *Victimization [sexual abuse, physical abuse, or neglect].

Thus, CAG argues, the qualifications for admittance to the proposed facility are exactly the opposite of those required for admittance to a youth care home. While the proposed facility would be less restrictive than an acute care ward in a mental hospital, it is still designed to house patients who, by definition, pose a danger to themselves and others and, therefore, must be "secured" from the general public. Indeed, the only reason that youths will be placed in this facility rather than a less restrictive setting is that neither the public school system nor their families can tolerate the actual and potential dangers of violent and antisocial behavior.

CAG argues that the term "residential treatment facility (RTC)", the term used in the special exception application, is not synonymous with the term "community-based residence facility" (CBRF), as the District wants this Board to presume. The role of CBRFs, whether halfway houses, group homes, convalescent nursing homes, or homes for the blind or aged, is to "assist the residents in achieving an optimum level of function and self care within the community." The role of the proposed operation, on the other hand, is to provide "a 24-hour, highly structured, secure therapeutic residential program for severely emotionally or behavioral [sic] disturbed children who are unable to function in a less restrictive setting." (Certificate of Need Application, p. 56-9) (emphasis added).

CAG argues that while the proposed residential treatment center may serve as a "residence" for its young patients for the duration of their treatment, just as juvenile detention centers, mental hospitals, and prisons serve as the full time residences of their inmates, it would not be a "community-based residential facility" within the meaning of that term as defined in 11 DCMR Section 199.9. Patients of this facility would be qualified for a "community-based" residence only after their mental condition and behavior have been treated and modified to the point that they may live in such an environment.

In CAG's view, the wording of the application serves as a testament to the fact that this facility falls wholly outside the scheme of the District's Zoning Regulations. The application muddles the proper characterization of this institutional facility, calling it different names in different places: for example, a "youth residential care facility" (page 11), and a "youth

residential care home" (page 9). But this cannot evade the key point: the Board has jurisdiction to award special exceptions only in limited circumstances. Youth Care Homes are not among those eligible cases. And, as shown, the facility is not a Youth Care Home in any event.

The Association concludes that because the proposed facility does not meet the definition in either category, the Board cannot grant the relief requested as a special exception. A use variance must be sought to establish the proposed use. Therefore, the special exception application must be dismissed.

The applicant submitted a response on October 23, 1991, opposing the motion to dismiss on jurisdictional grounds. The applicant maintains that the proposed program may be permitted by special exception relief. The applicant states that the establishment of a youth residential care home for more than 15 children at the Hurt Home, located in an R-1-B District, is permitted by special exception in accordance with Subsection 219.7 of the Zoning Regulations. Contrary to the assertions by the Georgetown citizens who are opposed to the establishment of a children's program at the site, this provision, which appears under Section 219 of the Regulations, entitled "Youth Care Homes and Community Residence Facilities," is intended to encompass both of the facilities, which the Regulations define as "community-based residential facilities." (11 DCMR 199).

The applicant argues that the strict reading of Subsection 219.7 urged by the opponents, which they assert would allow a special exception for a "community residence facility" (defined as housing residents over 18 years of age), but not for a "youth residential care home," contradicts the intention of the Zoning Commission as reflected in its Order No. 347, dated July 9, 1981, defining and regulating the various types of community-based residential facilities. This order specifically accords identical zoning treatment to the two sub-categories of community-based residential facilities which are addressed in 11 DCMR Subsection 219.7 - youth residential care homes and community residence facilities - by permitting their establishment "in the same zones in the same manner." (emphasis added by the applicant) (See Z.C. Order No. 347, at p. 5).

Moreover, the applicant argues, the Commission's order specifically stated that the intent of the new regulations was to "permit all kinds of community-based residential facilities in all zones" and to specifically place less restrictions on establishing such facilities in residential zones, such as an R-1 zone, in which the subject property is located. Thus, a regulation, such as Subsection 219.7 which lifts the cap of 15 residents for a community

residence facility should operate to allow the same flexibility for a youth residential care home. The other type of facility covered in Section 219.

The applicant asserts that there is nothing in the Commission's order, nor is there any other rational basis, for imposing more restrictions on the number of children than on the number of adults who can reside in a community-based residential facility. Moreover, if these two types of facilities were to be accorded different treatment in an R-1 District, logic dictates against placing greater restrictions on the establishment of a facility for children than on a facility for adults. The impact of the latter would surely cause more concern for the surrounding residential neighborhood, which would already be accustomed to large numbers of children attending schools or participating in other community activities.

The applicant further asserts that the well-established principles of statutory construction favor a rational and sensible interpretation of specific enactments in order to produce a result consistent with the purpose and policies of the regulatory scheme in question. 2A SUTHERLAND, STATUTORY CONSTRUCTION (4th Ed. 1984), Section 45.12, 46.05. Indeed, a departure from a literal, narrow interpretation of an enactment is justified when it would produce an inequitable and pointless outcome inconsistent with the purposes and policies behind the regulations. Id.; See Wright v. U.S., 315 A.2d 839 (D.C. 1974) (literal reading of statute is not mandated if an absurd result would follow). In this case, the opposition's assertion that the Board is without jurisdiction to permit the establishment of a youth residential care home for more than 15 because of the use of the term "community residence facility" in Subsection 219.7 rather than the more generic term "community-based residence facility," produces an unreasonable result, and one inconsistent with the regulatory scheme for residential facilities and the Zoning Commission's order which is the basis for that scheme. Indeed, the entire regulatory scheme, which includes the grouping of youth residential care homes and community residence facilities together under Section 219 while separating out other community-based facilities, e.g. "health care facilities" (Section 220) and "emergency shelters" (Section 221), reflects the Zoning Commission's intent to treat a youth residential care home and a community residence facility in the same manner.

The applicant pointed out that the special exception relief requested by the applicant under Section 219, was based on a determination by the Zoning Administrator about what relief was required under the Zoning Regulations before the proposed operation could be established. The requested relief was not based upon the applicant's own determination.

The applicant maintains that such a determination by the Zoning Division is significant in the Board's evaluation of the opponents' assertions because, as the Court of Appeals has recently held, great weight should be given to any reasonable interpretation of a legislative enactment "by an agency charged with its administration or enforcement." Winters v. Ridley, No. 90-18 slip op. at 20 (D.C. September 4, 1991); See also Winchester Van Buren v. Rental Housing Commission, 550 A.2d 51, 55 (D.C. 1988); Office of People's Counsel v. Public Service Commission, 477 A.2d 1079 (D.C. 1984). This is particularly true here where the Zoning Division is charged with determining what relief is appropriate before any relief can be sought from the Board. The applicant argues that it should be permitted to proceed in accordance with the Zoning Administrator's determination that special exception relief is available for a youth residential care home for over 15 children because this determination was both reasonable and consistent with the scheme and intent of the regulations regarding community residence facilities.

The applicant maintains that the proposed program for children meets the criteria for a "youth residential care home" as defined by the Zoning Regulations at Section 199.9. The applicant expressed the following views:

The opposition's contention that the young children who will be placed at the facility would not be "able to perform the activities of daily living with minimal assistance" because they are in need of a treatment facility, reflects the opponent's misunderstanding of the nature of the program and of the needs and capabilities of emotionally disturbed children. Indeed, if such an interpretation were adopted, children with emotional problems who require any supervision could never be placed in a community facility. As the applicant has consistently stated, the children who will be placed at the facility will be those found appropriate for the level of treatment available in a residential facility in the community, rather than the more restrictive setting of a mental hospital or other institution. Moreover, the fact that staff will be available at all times to provide the required therapeutic environment for these children, and to assist them when necessary, does not imply that the children would not be expected to perform the usual activities of daily living as would other children of the same age and developmental level.

Therefore, the opponents' contention that the Hurt Home is not a youth residential care home ignores the plain facts of the application and is wholly without merit.

On October 31, 1991, CAG submitted a response to the applicant's memorandum of October 23, 1991. In that response, CAG stated in simple terms the basis for its argument that the Board lacks authority over the subject special exception application. CAG stated:

The District of Columbia Municipal Regulations provide for seven types of Community-Based Residential Facilities (CBRFs). Each category is eligible for operation in an R-1 District according to exceptional procedures

The seven subspecies of CBRFs are treated in four sections of the Zoning Regulations: Sections 220 and 221 deal with one each; Section 219 deals with two; and Section 222 encompasses three.

Section 222 lays down identical rules for the three types of CBRFs subject to it. Section 219, by contrast, does not. One subsection of Section 219, by its terms, covers one but not both of the categories governed by the section. Subsection 219.7 begins with the words "In the case of a community residence facility . . ." that is, Subsection 219.7 does not govern the other type of CBRF generally within Section 219, youth care homes.

The opponents maintain that Subsection 219.7 is the only provision under which the proposed use could arguably be allowed in an R-1 District without a use variance. This is the provision upon which the applicant relies. The opponent argues, however, that Subsection 219.7, by its own terms cannot apply to the proposed use. The opponent further maintains that the proposed use would not be a CRF because a CRF houses only persons over age 18. Thus, if the proposed facility is a youth care home, the Board cannot permit occupancy by more than 15 people pursuant to its special exception authority.

The opponent maintains that the language and meaning of the rule is clear and special exceptions may be granted only where the regulations permit them. Under the circumstances of this case, however, no such authority exists.

It is the opponent's contention that the applicant's arguments do not meet the plain meaning of the Zoning Regulations. The opponent states:

The [applicant] contends that a few words in a 1981 Zoning Order override the clear language of the Regulations. But it is common place that a rule wholly without ambiguity must be read to mean what it says, and that extraneous material may be admitted as a guide only when the clear meaning of words leads to an absurdity. That is far from the case here

The opponent maintains that it is not absurd for the Regulations to make it easier to establish a CRF than a YCH. The opponent disagrees with the applicant's assertion that the impact a youth care home on the neighborhood is less than or equal to the impact of a CRF. To the contrary, the opponent argues that youth care homes may draw more outsiders to the facility - including teachers, counselors, medical and social service personnel, aides, family members and friends. In addition, youth care homes bring with them transportation and noise problems as well as the need for close supervision. The opponent believes that the applicant's responses to the motion to dismiss were inadequate.

At the end of the public hearing of October 9, 1991, the Board left the record open to receive from the Zoning Administrator a review of the zoning relief cited in the memorandum from the Zoning Review Branch dated June 19, 1991. By memorandum dated October 31, 1991, the Board specifically requested from the Zoning Administrator information regarding the applicability of Sub-section 219.7 to a youth residential care home for more than 15 residents.

By memorandum dated November 8, 1991, the Zoning Administrator responded to the Board's request. He stated that his office reviewed the subject application in light of the available information and determined the cited zoning relief to be appropriate. The Zoning Administrator stated:

Although the occupancy application indicated the proposed use to be "Residential Treatment Facility for Child and Youth Services Administration", it has been determined that, for purposes of Zoning, the proposed facility is a "Youth Residential Care Home". This determination was based on information provided by the applicant relating to the nature of the population, and further supported by evaluation and report from the Service Facility Regulation Administration of this Department.

Further, it is the interpretation of this office that special exception relief under provisions of Section 219.7 to allow a Youth Residential Care Home for more than 15 residents is consistent with the intent of the Zoning Regulations as outlined in Zoning Commission Order No. 347.

On November 19, 1991, the opponent submitted a response to the Zoning Administrator's memorandum dated November 8, 1991. Commenting on the contents of this memorandum, CAG stated that the document contains three paragraphs. The first one recites the question. The second paragraph concludes that the proposed use is a Youth Residential Care Home as defined in the Zoning Regulations. The third paragraph, which purports to answer the question reads in its entirety as follows:

Further, it is the interpretation of this office that special exception relief under provisions of Section 219.7 to allow a Youth Residential Care Home for more than 15 residents is consistent with the intent of the Zoning Regulations as outlined in Zoning Commission Order No. 347.

With regard to this paragraph the opponent responds:

This conclusory statement, innocent of analysis or authority, surely provides no basis for the proposition that a regulation expressly limited to community residence facilities (CRFs) actually embraces something else. Its reference to Zoning Commission Order No. 347 is unavailing, because that very order makes reference to BZA approval only of homes for 15 people or fewer, located in R-1 Districts.

The Administrator fails to address the different burden of proof to be borne by an applicant for a use variance - the only method by which the District may proceed if the Board is without the power to consider a special exception. In short, his opinion is wholly inadequate to its task. It cannot justify a procedure wholly and directly at odds with the regulation upon which it is allegedly based.

Finally, the opponent stated that for the Board to accept "the Zoning Administrator's unsupported and unsupportable conclusion would make a mockery of this process." The opponent maintains that the applicant must abide by the zoning laws and regulations as they are written.

At its Special Public Meeting of November 20, 1991, the Board considered the opponent's motion to dismiss as well as the responses from the Zoning Administrator and the parties. After consideration of the foregoing documents, the Board concluded that it did not lack jurisdiction over the application and that the motion to dismiss should be denied.

The Board is in accord with the interpretation of the Zoning Administrator's office that special exception relief for a youth residential care home under Subsection 219.7, is consistent with the intent of the Zoning Regulations as set forth in Zoning Commission Order No. 347. In that order, both terms - "youth residential care home" and "community residence facility" - are defined and listed as sub-categories of the general term "community-based residential facility." It is the Board's view that the Zoning Commission intended to allow both youth care homes and community residence facilities for more than 15 persons if certain conditions were met. The Board is also of the opinion that the children to be served meet the characteristics of persons described in the definition of youth residential care home, given

that these children are able to perform the activities of daily living with minimal assistance, as indicated by the applicant in its response to the opponent's motion.

In light of the foregoing the Board concludes that the motion to dismiss is **DENIED** by a **VOTE** of 3-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny).

SUMMARY OF EVIDENCE OF RECORD:

1. The property which is the subject of the application is located at premises 3050 R Street, N.W., Lot 837 in Square 1282. The property is zoned R-1-B.

2. The subject lot is an irregularly-shaped tract of land that contains 43,869 square feet of land area, or slightly more than an acre. The front of the property abuts R Street and is 179 feet wide. Approximately three-fourths of the west property line is located adjacent to a 14-foot wide, dead-end public alley. The site abuts private property to the south and southwest. To the east, the subject property abuts the site of the old Jackson School building which is owned by the District of Columbia and used as an arts center under the auspices of the D.C. Public Schools.

3. The subject lot is developed with a four-story structure built in 1913. The building was constructed for institutional purposes and until 1987 it was known as the Henry and Annie Hurt Home for the Blind, a group residence for the blind and near-blind. (Hereinafter "the Hurt Home").

4. In 1987 the property was acquired by the District of Columbia for the purpose of establishing a 24-bed residential treatment facility for seriously emotionally disturbed children. The home will be operated under the Department of Human Services' Commission on Mental Health Services. The requirement to establish the facility was a specific component of the District of Columbia's Final Mental Health System Implementation Plan, effective October 1, 1987. The plan was mandated by the Saint Elizabeths Hospital and District of Columbia Mental Health Services, Act, D.C. Code Section 32-621 et seq. The Mental Health Services Act was enacted to merge under District of Columbia control, the federally-operated Saint Elizabeths Hospital with the District-operated community mental health system. Congress specifically mandated that the Mayor develop and implement a plan for a unified, community-based mental health system, in accordance with the federal court decree in Dixon v. Weinberger, 405 F.Supp. 974 (D.D.C. 1975); D.C. Code Section 32-62(b)(2).

5. The applicant, the Department of Administrative Services, is seeking a special exception under the provisions of 11 DCMR 219. For purposes of this order, the District of Columbia and the Commission on Mental Health Services (CMHS) will be referred to as the applicant.

Acquisition and Legal Background

6. The District of Columbia acquired and developed the Hurt Home pursuant to its mandate to provide community-based health services.

7. Renovations began at the site after the District obtained a building permit from the Department of Consumer and Regulatory Affairs on August 28, 1990. At that time, the District did not seek zoning review for the project, based on the Superior Court opinion by Judge Frederick Weisberg, dated June 23, 1988 which specifically held that the District of Columbia zoning laws and regulations did not cover the District as property owner.

The Superior Court opinion remained in effect until the Court of Appeals issued its decision on March 29, 1991, which affirmed Judge Weisberg's ruling that the District has been exempt from its zoning laws, but remanded the case back to the trial court for further proceedings to determine whether the new Comprehensive Plan Amendments Act of 1989, which has now subjected the District government to zoning requirements, should apply to the Hurt Home project. In the interest of reaching a prompt and final resolution of this matter, the District decided to forego its legal right to seek a continued exemption from the District's zoning requirements, and has voluntarily proceeded with all of the necessary reviews.

The Court of Appeals in its March 29, 1991 decision also reversed the trial court's holding that the District did not need to obtain a Certificate of Need because it was part of the Congressional and D.C. Council approved Final Mental Health System Implementation Plan. Following the Court of Appeals decision, the District immediately initiated an application for a Certificate of Need to the State Health Planning and Development Agency (SHPDA). A decision on the Certificate of Need was expected on or before October 21, 1991.

Intended Use

8. The proposed program is designed to service 24 emotionally disturbed boys and girls, six to 12 years of age. These children will receive 24-hour care, including a variety of psychiatric services, residential treatment, education and recreation. The home will also provide psychiatric day treatment and special education services for an additional 15 latency-aged

children from the community. These children will be returned home to their families each evening. This component of the program will operate from 9:00 a.m. to 5:00 p.m., Monday through Friday.

9. Most of the services will be provided on-site, however, the purpose of the program is to ultimately reintegrate the children into the community. To accomplish this goal, a behavioral program will be implemented to monitor the children's behavior. Once a child demonstrates that he or she is able to benefit from the use of community resources, he or she will be allowed to do so, with supervision.

10. The program will offer a highly structured environment that is well planned and predictable from the hour the resident awakens until he or she goes to bed. On-site clinical services such as individual, family and group therapy will be provided by a professional staff including, but not limited to, psychiatric social workers, child psychiatrists, registered nurses, a psychologist and a pediatrician. In addition, clinical support groups, such as art, music, recreation and movement therapies will be an important part of each child's daily program. The staffing pattern will provide a 1.9 to 1 ratio of staff to children.

11. Program services will be contracted out to a private vendor, and several nationally recognized providers of residential treatment services have expressed interest in replicating their services as a model program at the Hurt Home. Management oversight will be provided by the Residential Placement Unit of the Child and Youth Services Administration, CMHS.

12. The residential floors of the building are divided into three living units, each accommodating eight children. On each living unit the children will have access to a living room with a kitchenette for snacks and a shared living/activity room in the newly enclosed porches. The second floor educational wing has five classrooms, as well as a separate computer classroom.

13. Recreation for the children in the residential treatment facility will almost always be structured activities supervised by staff. There are a number of indoor areas that will be utilized for indoor recreation for children, including a large activity room on the ground floor, the dining room (when not being used for meals), and rooms for art therapy, games, exercise and other group activities.

14. The Hurt Home's spacious grounds feature a landscaped front yard along R Street and an expansive landscaped backyard to the south. Much of this space will be utilized as play areas for the children, and it is believed to be quite adequate for this

purpose. Recreational space includes a 20' x 30' sport court with a basketball hoop, a picnic area, a play field, a tree-lined walkway with benches, and a terrace surrounded by a privacy wall.

15. The applicant maintains that the application meets all of the requirements of 11 DCMR 219 which reads as follows:

219 YOUTH CARE HOMES AND COMMUNITY RESIDENCE FACILITIES (R-1)

- 219.1 Youth residential care home or community residence facility for nine (9) to fifteen (15) persons, not including resident supervisors and their family, shall be permitted in an R-1 district if approved by the Board of Zoning Adjustment in accordance with the conditions specified in Section 3108 of Chapter 31 of this title, subject to the provisions of this section.
- 219.2 There shall be no other property containing a community-based residential facility for five (5) or more persons in the same square and no other property containing a community-based residential facility for five (5) or more persons within a radius of one thousand feet (1,000') from any portion of the subject property.
- 219.3 There shall be adequate, appropriately located and screened off-street parking to provide for the needs of occupants, employees, and visitors to the facility.
- 219.4 The proposed facility shall meet all applicable code and licensing requirements.
- 219.5 The facility shall not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.
- 219.6 The Board may approve more than one (1) community-based residential facility in a square or within one thousand feet (1,000') only when the Board finds that the cumulative effect of the facilities will not have an adverse impact on the neighborhood because of traffic, noise, or operations.
- 219.7 In the case of a community residence facility, the Board may approve a facility for more than fifteen (15) persons, not including resident supervisors and their families, only if the Board finds that the program goals and objectives of the District cannot be achieved by a facility of a smaller size at the subject location, and if there is no other reasonable alternative to meet the program needs of that area of the District.

219.8 The Board shall submit the application to the Director of the Office of Planning for coordination, review, report, and impact assessment, along with reports in writing of all relevant District departments and agencies, including but not limited to the D.C. Department of Public Works, Human Services, and Corrections and, if an historic district or historic landmark is involved, of the State Historic Preservation Officer.

16. One of the applicant's representatives, Mr. Robert Washington, Commissioner of the District of Columbia Commission on Mental Health Services, testified at the public hearing about the background, the need and the purpose of the children's treatment facility. He testified that the CMHS was established in 1987 with several purposes. One purpose was to develop an array of programs for children and youth with serious emotional disturbance. Since 1987, CHMS has been in the process of establishing such programs. Included in that array of services are programs for children who cannot be maintained at home or in the public schools and therefore need residential treatment. CHMS intends to establish three 24-bed facilities similar to the one proposed at the Hurt Home.

17. Mr. Washington testified that these facilities are being established because there are no such programs currently existing in the District of Columbia. At present, children who require this level of treatment must be sent to far-away places like Texas, Michigan and Florida, at great cost to the District. Locating the children away from home is inappropriate because the staff cannot work with the children and their families if they are separated by thousands of miles. Currently there are 267 children in residential placement.

18. The children for the proposed facility will come from the Forensic Services Administration and the D.C. Public Schools, but not from the Youth Services Administration. These children are not adjudicated delinquents. Those children who are a danger as a result of their mental illness will continue to be housed at the acute psychiatric facility on the ground of St. Elizabeths Hospital.

19. Mr. Washington testified that it would not be appropriate to locate the proposed facility at St. Elizabeths Hospital because the idea is to develop a community-based system for those children who have come from the community to return to the community and to normalize their environment as much as possible. Furthermore, at St. Elizabeths, children would be stigmatized by being in an environment of 1,300 severely and chronically mentally ill adults. This stigma would be inappropriate for children that are six to 12 years of age.

20. Dr. Washington testified that the children have a myriad of problems. They may have learning disabilities, social relations difficulties, problems with physical development, sensory development or perceptual motor and sensory integration. They may be too shy or too assertive. They may come from families that have not been able to nurture them sufficiently thereby interfering with their normal growth and development.

21. Dr. Washington testified that the average length of stay for the children in the program is about two years and no child over ten years of age would be accepted.

22. With regard to the facility's standard of care, Dr. Washington testified that the facility will be medicaid eligible and would meet the Health Care for Financing Administration certification requirements. The facility will be accredited by the Joint Association of Accreditation of Health Care Organizations (JAAHCO) and the applicant will abide by special education laws.

23. Dr. Ann Younes, Chief of the Residential Placement Unit in the Commission on Mental Health Service's Child and Youth Services Administration, testified about the treatment program. She testified that the children to be served will be District of Columbia residents who will come through her unit to be referred for this level of care. She emphasized the effectiveness of early treatment for the child. She also pointed out the importance of treating the entire family and reintegrating the child into the family. Dr. Younes testified that with no local year-round treatment facility, clinicians who treat such emotionally disturbed children resist sending a child away to Texas, Georgia or Florida. Instead they wait until the child is old enough to go, and then, if it is not too late, treatment is clearly lengthier, less effective and much more costly. Furthermore, during that waiting period, the child is in considerable pain. Establishing the Hurt Home facility will clearly improve the continuum of care by allowing the clinicians to network services, ensuring that the caregivers in the community remain involved with the children.

24. Dr. Younes testified that this facility was purposely designed to be small, and over the last 15 years, there has been a general reduction in the size of residential treatment facilities.

Dr. Younes testified that the treatment services will focus on four areas of human functioning: 1) physical functioning; 2) inter-psychic or emotional functioning; 3) social; and 4) cultural functioning. She stated that there will be a full range of individual and group treatment services, including family therapy, psychiatric services, rehabilitation and educational services. There will also be family support groups and family training. The educational services will provide special education and speech therapy. The residential aspect will be therapeutic in itself.

Each child will have a primary therapist who will be responsible for directing the care. Dr. Younes stated that the normal work day for a child is the school day, and a day at the Hurt Home will be organized around school experiences where interactions with peers and adults are used as the basis for therapy. Teachers will be part of the clinical team because how the child learns may be more important than what he or she learns.

25. Dr. Younes testified that there are currently about 22 District children in the age group targeted for the Hurt Home. All of these children are placed out-of-state. She indicated, however, that the numbers vary constantly and she currently has a waiting list of 70 children. She indicated further that the District frequently uses the Florida facility because it is one of the few facilities that works with that age group. However, she stated that the applicant would not necessarily move all 22 children to the Hurt Home because they may be improving where they are.

26. Dr. Younes testified that to facilitate the participation of family members in therapy sessions, the program operators will use a van to bring people to the facility when they are unable to travel by other means. Also, sessions will be held at other locations as part of the outreach program. The applicant does not want transportation to be a barrier to progress. Dr. Younes testified that the visiting hours will be planned around the parents' working schedules. She testified that the groups visiting the facility will not be large. Parent support groups generally have four to ten persons and family therapy sessions are one on one. The applicant does not plan to have all visitors at the site at one time.

27. The applicant stated that the proposed facility is located within a 1,000-foot radius of the Sevier House, an Episcopal Church nursing home residence at 1515 32nd Street, N.W. The Sevier House currently houses approximately 30 elderly residents. The applicant stated that the neighborhood in which the subject site is located can accommodate an additional community-based facility without having adverse impact on the neighborhood. The applicant stated that cumulative effect of the currently existing facility and the proposed facility will have a minimal impact on the surrounding area. Both facilities provide on-site parking for shift employees and visitors and both facilities are designed to house residents who do not operate motor vehicles. Therefore, the operations will not significantly add to the traffic volume in the area.

28. The applicant pointed out that the Sevier House and the Hurt Home for the Blind coexisted in this same proximity for a number of years. The Hurt Home for the Blind, which began operations in 1913, housed up to 49 residents. The Sevier House has a certificate of occupancy for 50 residents and has been in

operation since 1958. Thus, the total number of residents of the two facilities, with the conversion of the Hurt Home to a youth residential program, would be lower than in past periods when the Hurt Home for the Blind was operational. Significantly, the Sevier House, which has 30 residents, is below capacity because the Episcopal Church Board is uncertain about the continued operation of the facility. Currently the church board is studying the feasibility of maintaining the program at the Sevier House. The church board may decide to close the nursing home and sell the property or it may propose a change in the use.

Finally, the applicant stated that because of the location of these two facilities and the surrounding streets and traffic patterns, the access to these facilities is quite separated. Thus, the simultaneous operation of these two facilities would have minimal impact on the neighborhood.

29. Mr. Lawrence Parrett, the applicant's architect and project management consultant testified about the facility. The applicant also submitted a written statement describing the facility. The Hurt Home is a stately, three-story, L-shaped structure that includes a full daylight ground floor. The original classically symmetrical building underwent major alterations in 1924-25, including the addition of an east wing at ninety degrees to the original main structure, creating the current L-shaped floor plan and nearly doubling the building's area. Other alterations and improvements have occurred over time, including new heating and cooling systems, enlarged concrete-framed screen porches off of the second and third-floor living areas, and an elevator at the south end of the east wing, providing barrier-free accessibility to all four floors. Unfortunately, the replacement systems are now outdated.

30. The applicant stated that the building is currently undergoing renovations in order to meet all applicable building codes, life safety codes, and licensure and accreditation standards to open for the proposed use. The current renovation plans call for complete replacement of the building systems - heating, ventilating and air conditioning (HVAC), electrical power and lighting, plumbing and fire detection and suppression - as well as some reconfiguration of the interior partition walls to conform with programmatic requirements.

31. The applicant stated that the new energy efficient HVAC system, with central temperature controls, includes an electric chiller and a gas-fired boiler to supply both chilled and hot water to new individual room fan coil units. All supply ductwork for conditioned and fresh air, as well as hot and chilled water piping, will be insulated in accordance with NFPA 90A and BOCA energy codes. The existing boiler, water piping and radiators are being removed.

32. The applicant stated that a majority of the rooms will maintain their existing functional purpose (i.e. kitchen, dining room, sleeping rooms, restrooms, etc.) The most extensive change in room use will occur on the ground floor, which will be renovated for staff offices, storage, an activities room and service space. The second-floor east wing of sleeping rooms will be converted into 6 classrooms, serving a maximum of 39 students. The other alterations include adding staff stations and seclusion rooms for each of the residential living units, and enclosing the porches for year-round use. The only new structural construction will be the addition of a third egress stair on the back of the building, at the juncture of the east wing and main structure. The exterior facade of the new stair will be flush with the face of the projecting porches. New facing materials will be detailed to treat both the stair and porch enclosures as a continuous elevation, sensitive to the materials and proportions of the surrounding building.

33. The applicant is committed to ensuring that the historic integrity and character of the building and grounds are maintained. All construction renovations and maintenance programs for the property will be carried out in a manner that complies with both the letter and spirit of local and federal historic preservation standards and laws.

34. The Hurt Home's spacious grounds feature a landscaped front yard along R Street, an expansive landscaped backyard to the south, and an off-street parking and delivery area behind the building, served by a driveway off the alley to the west.

35. All of the existing landscaping will be thinned, pruned, fertilized and otherwise maintained, except in cases where trees have become diseased or are of a less desirable species (catalpa, boxelder, mulberry). Hazardous tree stumps will be ground down below grade, and holes in the lawn will be filled in.

Additional screening, planting and recreation areas have been developed as part of a long term Landscape Master Plan, with recommendations from the program's recreation therapist and Facility Support Division staff.

A sense of privacy and security is currently provided by a six-foot-high brick wall along the perimeter of the backyard, in a manner characteristic of the surrounding Georgetown neighborhood. This wall will be retained and repaired as necessary. No new gates are planned.

A brick wall to match the existing wall has been built at the property's northeast corner, closing a small gap between the building and the existing wall. This has eliminated an opening that was difficult to see from the backyard, making it easier to

supervise the children playing in the yard. It will prevent them from accidentally running out into the street (chasing loose balls, etc.).

36. The existing parking lot behind the building is being expanded by adding a second row of parking, to provide a total of 14 parking spaces, including one parking stall designed and designated for handicapped use. The new parking spaces are being placed in a configuration that will retain the existing significant trees and minimize the impact on the landscaping and character of the site. In addition, a new brick wall will be built to screen the parking from view from the alley. The materials and design of the new wall will match the existing brick wall surrounding the back yard.

37. Parking. The applicant stated that there will be a staff of 22 1/2 full time equivalent employees (one half-time and 22 full-time employees). About one third of this number will travel by metrobus. Bus stops are located on Wisconsin Avenue and on Q Street - about a five-minute walk from the site. The majority of the staff that will use the parking spaces will be working during the day shift. A van pool or car pool will be established, if needed, to keep the number of cars down. The applicant stated that the 14 spaces should be adequate to meet the needs of these employees.

38. The applicant plans to designate an area in front of the building for government vehicles to park. There will also be a bus zone for the school bus that will bring children to the site for the educational part of the program. In addition, a "No Parking" zone will be established at the front entrance for passenger drop-off. These special parking zones will operate from about 8:00 a.m. to 6:00 p.m.

39. The applicant is planning to have an average of four to five daily visits by family members. After the day shift hours, the applicant expects to have adequate parking at the rear of the site for visitors who drive. The applicant conducted a survey of parent groups and found that 90 percent use the Metro. Use of public transportation will significantly reduce the demand on parking at the site.

40. Traffic. The applicant's architect/planner presented testimony on the impact on traffic in the area. He stated that the traffic volume as measured by the Department of Public Works (DPW) is 5,500 vehicles per day. This estimate is based on the fact that the area is generally residential and most of the traffic is going to occur between 6:00 a.m. and about 8:00 p.m. Based on the measurements by DPW, there may be between 300 and 350 cars per hour on R Street in the area of the site. The applicant maintains that

the 14 vehicles arriving within an hour in the morning and leaving in the evening will not have a significant traffic impact on a street that carries 300-350 cars per hour.

Facility Operation and Maintenance

41. Building Security. The applicant stated that the best security for emotionally disturbed children is adequate staff supervision. The applicant maintains that children playing in the backyard, or participating in other activities outside the facility, will have adequate staff supervision. Residents in this program will be young children, many of whom have been abused or neglected. These are not youngsters deemed to be a threat to the community. In fact, admission criteria precludes admission of children who present a serious likelihood of harm to themselves or others.

Staffing will be provided at the front door of the building during visiting and operating hours. When staffed, this entrance will not be locked. However, no one will be allowed to enter or leave the building without signing in and having official business at the facility. When this entrance is not staffed, the front door entrance will be locked. All other entrances and exits will be locked at all times, with entry gained only by authorized personnel. Emergency exits will have a delayed opening mechanism, with an alarm system for alerting staff when there is an attempt to open the doors from the inside.

The bedroom windows will have new security screens installed on the interior side of the glass, which will not be noticeable from the exterior. These wire mesh screens will deter break-ins and prevent the children from harming themselves.

New lighting is being designed for the entire project, including new fixtures at the building entrances and appropriate lighting in the parking areas. The new lighting will be bright enough to provide site security without excessive glare. Fixtures appropriate to the residential and historic character of the neighborhood have been selected. While the perimeter of the building will be physically secure and staff supervision will be constant, the focus will not be on locks and bars but on the safety produced by a staff secure facility.

42. Maintenance. The Commission's Facility Support Division (FSD) station forces, located at the St. Elizabeths Hospital campus, will have oversight over the maintenance of the building and grounds. FSD has a full complement of engineers, craftsmen and tradesmen, representing all construction trades, for overseeing

preventive maintenance and repair work. FSD recommendations for maintenance and new landscaping have been included in the renovation contract.

43. Trash. A trash holding area has been designed at the far east end of the parking area behind the building. This holding area is immediately adjacent to the service entrance on the ground floor at the south wing of the building, and is screened by the existing brick elevator tower to the east, the main building to the north, and a new screen wall to the south.

Trash will be collected daily within the building and stored in appropriate containers in the loading area of the parking lot. Trash pickup will be done through a private contract, administered by the Department of Administrative Services (DAS). Trash pickup will be scheduled for two times a week initially, and will be increased or decreased based on need. Medical waste will be collected in a secure location and disposed of in accordance with all regulations.

44. Emergency Vehicles. The alley and parking lot can accommodate emergency vehicles for access to the back entrance and elevator. Fire fighting equipment will connect to the existing hydrants on the north side of R Street for water supply, and to the new standpipe on the north side of the building for maintaining water supply to the fire sprinkler system.

45. Snow Removal. All CMHS facilities are covered under an emergency snow removal plan. Twenty-four hour facilities, such as the Hurt Home, are the highest priority for snow removal. Removal normally begins with the first accumulation, and is complete within 24 hours in all but the most exceptional cases.

46. The applicant maintains that operation of the facility will not have an adverse impact on the neighborhood. The applicant believes it is significant that the facility will house a self-contained program where the children will receive all treatment, including educational, therapeutic and residential services on the site. Staff will arrive and depart from the site at set times during the day and school buses will transport the 15 additional day students twice daily, at the start and end of the psycho-educational program. The children will use the resources available in the community, but will do so in small groups and under staff supervision.

47. The applicant urges that, in determining the expected impact on the neighborhood, the Board should consider that the Hurt Home building was constructed for and has always been used for institutional purposes. This is not a situation in which a residential property is being converted to a group residential facility. Instead, this is a continued use of the site to house

handicapped individuals. While there will be some impact from occupying this site, which has been vacant since the District purchased the property in 1987, the District's use will not have any significant affect on the immediate neighborhood due to traffic, noise or operations.

48. The applicant contends that the neighborhood can accommodate a community-based residential facility in addition to the currently existing Sevier House which houses approximately 30 elderly patients. The applicant believes that the proposed Hurt Home facility will have a minimum impact and that the cumulative effect of the two facilities will not have an adverse affect on the surrounding area. Both facilities have coexisted in the area for a number of years.

49. With regard to the search for a facility, the applicant testified that the Real Property Division of the Department of Administrative Services (DAS) is the basic provider of facility finding services.

50. The CHMS Commissioner testified that for approximately seven months prior to acquiring the Hurt Home, he worked with the Real Property Division (RPD) in an effort to find a site for a residential treatment facility. Two facilities were identified by the RPD as appropriate alternatives based on the criteria provided by CMHS. These facilities were the Hillcrest Children's Center, located at 1325 W Street, N.W. and the Jewish Community Center located near 16th and Q Streets.

The Commissioner testified that the Hillcrest Children's Center was a very nice facility that had formerly been used for residential treatment. It had good activity areas outside, but it had no green space, no recreational areas outside. Nonetheless, the CMHS was very aggressive in trying to acquire this property. The CMHS was preparing a sales offer on that facility when the property was purchased by the YMCA.

The Commissioner testified that the applicant went through the Jewish Community Center several times. It was a very large facility and unfortunately, it was also in very bad shape. The applicant felt that to pursue such a facility would be infeasible.

Approximately, a week after the Hillcrest Children's Center was purchased, the Hurt Home property was brought to the applicant's attention and the applicant looked into this option and moved forward to acquire it.

51. The applicant testified that while it has not withdrawn its request to have DAS refer it to physical facilities that are available for these types of services, within the last year, the applicant has been less aggressive in contacting DAS for such

information. Furthermore, the Real Property Division has not brought any properties to the attention of the applicant within the last 12 months. The applicant pointed out that it has two more residential treatment facilities to build and that physical plants are needed for these facilities as well.

52. Responding to the opponent's questions on cross-examination, the applicant testified that there is no reasonable alternative to meet its program needs, and the applicant testified as to why the facilities suggested by the opponent are not appropriate.

St. Elizabeths Hospital, although located in the District of Columbia, is inappropriate because emotionally disturbed children do not belong at a facility for mentally ill adults.

The Capital Psychiatric Residential Treatment Center and the Riverside facility have not yet been built. The applicant indicated that it hopes to use Riverside once it is built, but not the Capital Psychiatric Residential Treatment Center because it is more of a regional facility.

The Episcopal Center, the applicant maintains, has a wonderful program. However, it is a five-day per week residential program and the applicant does not have enough children with families that can be available to them to provide the continuity of treatment on Saturday and Sunday.

The Grafton School, located in Virginia, is currently used by the applicant. However, because it is a very strong program for the autistic and the developmentally disabled, it is not geared toward serving the target population of the Hurt Home.

The applicant testified that the Villa Maria facility is quite appropriate. However, because it is located near Baltimore, it is considered to be too far away since many of the children's family members lack transportation. The Villa Maria is even too far for children in the educational program alone. (There has been a concern that even Georgetown is too far). Furthermore, this facility has not been willing to become a D.C. Medicaid provider, although it is eligible for that service.

53. The applicant testified that six months prior to this hearing, the community groups were informed, at least four times, about the District's efforts to find alternative sites such as the Hillcrest Children's Center and the Jewish Community Center. However, the applicant has found it difficult to prove that alternative facilities are not available.

Community Involvement

54. The Hurt Home Advisory Board. Shortly after the District government purchased the Hurt Home in the autumn of 1987, the Commission on Mental Health Services established the Hurt Home Advisory Board, chaired by Mr. Jeffrey Kilpatrick. The applicant stated that the Advisory Board is comprised of at least 16 Georgetown residents and other community advocates who endorse this project, and includes representatives from the ANC, the Georgetown business community, the Commission on Social Services, the mental health community and parents of client children. The board members serve on a voluntary basis for staggered three-year terms.

The board has been meeting on a monthly basis with District officials since early 1988. It has conducted community education activities, provided support at public hearings and in court, and has acted as a neighborhood sounding board for the Commission, reporting on neighborhood concerns regarding the property.

The purpose of the Advisory Board is to advise the Commission during the planning, implementation and ongoing operation of the residential treatment facility. In response to neighborhood concerns communicated through the Advisory Board, the Commission has painted the building while awaiting renovations, maintained and augmented the landscaping, and ensured that the historic character of the property is retained during the renovation process.

Also, it is the purpose of the Advisory Board to represent the interests of the children in the District of Columbia relating to the need for services provided at the residential treatment facility.

The Advisory Board has sponsored or co-sponsored several public forums to encourage interaction with the Georgetown community. These includes an open house with tours of the facility in October 1988, a Ward 2 candidates forum in April 1991, and a cooperative open forum with the Washington Psychiatric Society at the Dumbarton United Methodist Church in June 1991.

The applicant stated that the Hurt Home Executive Director will be responsible for responding to all neighborhood and community concerns. In addition, each such concern will be shared with the Hurt Home Advisory Board. If the Executive Director is unable to provide a satisfactory response, then the concern will be directed to the Administrator of the CMHS Child and Youth Services Administration.

The Commission's Facility Support Division will be responsible for handling any concerns regarding building and grounds maintenance.

55. The Office of Planning (OP), by memorandum dated October 2, 1991, and through testimony at the hearing recommended conditional approval of the subject application. OP provided the Board with the following information with regard to the application:

The Office of the Surveyor indicated that a new lot of record was recorded for the subject site on April 15, 1988. The new or current lot of record is Lot 276. The previous lot of record was Lot 837. Information available at the Surveyor's office indicates that Lot 276 contains 43,869 square feet of land area.

The site is located within the Georgetown neighborhood of Ward 2. The boundaries of Square 1282 are R Street N.W. to the north; 31st Street N.W. to the west; Avon Place, Cambridge Place and 30th Street N.W. to the east; and Q Street N.W. to the south.

The Georgetown community is one of the oldest neighborhoods in the District of Columbia. The existing layout of the neighborhood is a good indication of how the neighborhood originally developed, primarily with rowhouses of varying sizes intermingled with large estates. Located to the west, north and south of the site are single-family detached homes. Rowhouses are located to the east of the site. M Street and Wisconsin Avenue have always served as the neighborhood's commercial corridors. Directly north of and opposite the site is Montrose Park, a U.S. Government facility. Also to the north is Dumbarton Oaks. The Georgetown Public Library is located two blocks to the west of the site.

The site is located in the Georgetown Historic District. This district was created in 1950 by an Act of Congress. The historic district has its own review board, the Old Georgetown Board (OGB), unlike other historic districts. The Old Georgetown Board is administered by and makes its recommendations to the Commission of Fine Arts.

The site is zoned R-1-B. This zone district permits matter-of-right development of single-family residential uses for detached dwellings. In addition to other matter-of-right uses, the R-1-B District permits a youth residential care home, a community residence facility, a health care facility, or an emergency shelter as outlined in Section 201 of the Zoning Regulations.

According to the applicant, litigation is pending on the proposed use of the premises as a residential treatment center for children. Initially, an application for a Certificate of Need (CON) was not submitted to the State Health Planning and Development Agency (SHPDA) because it was the city's legal opinion that the CON was not necessary. Suit was filed by the Citizens Association of Georgetown. The city's legal opinion was upheld by the D.C. Superior Court. However, the decision of D.C. Superior Court was

challenged and appealed to the D.C. Court of Appeals. On March 29, 1991, the D.C. Court of Appeals ruled that the District government had to prepare a Certificate of Need. Although an attempt was made to halt renovation of the building through a court order, the D.C. Superior Court heard the case and decided not to stop the renovation. The Certificate of Need was prepared and submitted to the State Health Planning and Development Agency.

Fifty-one employees will operate the proposed facility 24 hours per day, with a likely maximum of 23 at any one time (during the day). According to the applicant, the total number of employees may change slightly depending upon final contract negotiations. The staff will serve a population of 39 children. Of the total number of children to be served, 24 of the youths would reside in the home. The overall client-to-staff ratio would be approximately 1.30:1. This staffing pattern is consistent with similar programs/facilities in the country. The proposed staff would consist of child psychiatrists, psychologists, licensed social workers, registered nurses, therapists and educational staff.

The children who would be referred to the proposed facility would be severely emotionally disturbed youths who require intensive care and treatment. The proposed program would fill a major gap because there are no facilities currently available in the District of Columbia to serve the latency-aged children requiring continuous 24-hour care. In the past, these children have been sent to other states to receive care. Information provided to the Office of Planning documents that youths who could seriously harm others, children who have a primary diagnosis of mental retardation/developmental disability, or children who have a history of substance abuse would not be placed at the facility. After successfully completing the program, the children would be returned to a community environment. The length of time a child would stay at the proposed facility would depend on the identified problem areas. However, the average length of stay would be six to 18 months.

An existing community residence facility is located with 1,000 feet of the subject site. The existing facility is the Episcopal Church Home for the elderly (the Sevier House) which is located at 1515 32nd Street, N.W. A Certificate of Occupancy was issued on August 23, 1966 to the Episcopal Home for 50 residents. The Episcopal Home currently houses approximately 30 residents.

The number of parking spaces required by the Zoning Regulations for a community-based residential facility where 16 or more persons would be housed in the R-1-B District is determined by the Board of Zoning Adjustment. The applicant is proposing to provide 14 parking spaces at the rear of the proposed facility. One of the 14 parking spaces would be specifically designated for persons with physical disabilities. Of the total number of off-street parking

spaces proposed, all of the spaces would be used for staff parking. The off-street parking would be used to accommodate a staff that works on rotating shifts (i.e., day, evening and night). In addition, the applicant is proposing to reserve a government vehicle parking zone along R Street for three automobiles and one van. Passenger drop-off and pick-up and a bus zone for school buses would be available at the entrance to the proposed facility. According to the applicant, generally, neighborhood parking is available between the hours of 9:00 a.m. and 6:00 p.m. However, on-street parking is difficult after 6:00 p.m. and on weekends.

The site is convenient to public transportation. Buses travel along Wisconsin Avenue, P and Q Streets. All of the identified roadways are easily accessible to the site.

Off-street loading and delivery would be provided at the rear of the proposed facility. The applicant states that the number of deliveries would vary depending upon operational needs of the facility. On average, one or two daily deliveries would be made. With the exception of emergencies, repairs and deliveries would be limited to the daytime.

Trash pickup would be scheduled for two or three times per week. If the need arose, this schedule would be adjusted. Trash would be picked-up by a private contractor. Debris would be stored in a screened area containing a dumpster at the rear of the building. Any medical waste would be discarded in accordance with applicable regulations.

The type of treatment and services that are proposed for the Hurt Home would require parental involvement and family support. This would include involving parents on a daily basis with the child's treatment, parent training and educational groups, parent support groups and family therapy sessions. Accordingly, the majority of the visitors to the proposed facility would be parents or family members related to the resident population. The applicant indicates that most parents would visit the site during the evening hours (after 4:00 p.m.). Further, many parents would use public transportation to arrive at the proposed facility. Parking is proposed for family members and residents of the community at the front of the building after 6:00 p.m. on weekdays and on weekends.

The applicant's site plan identifies two play areas that are located at the rear of the proposed facility. On-site recreational facilities would include a picnic area and a playfield. In addition, the applicant states that a 20-foot by 30-foot paved sports area would be available on the premises for sports activities such as basketball. Montrose Park is located across the street from the site and could be used to augment the planned on-site recreational facilities. The applicant indicates that once a

child demonstrates that he or she can benefit from using community resources, he or she will be allowed to do so, individually or in small groups, with supervision.

An existing six-foot high brick wall is located on the east, west and south sides of the property. OP believes that the wall would be an excellent buffer to screen outdoor on-site activities such as parked cars, children at play, service/delivery/loading and trash collection. In addition, the existing wall would soften any outdoor noise that would be generated from the site as a result of normal daily activities.

The properties that could be affected by the proposed action are located to the west of the site. These properties contain single-family residential dwelling units. A 14-foot wide public alley separates the site from these residential properties. In addition, the six-foot high brick wall screens most of the properties along the western property line. Landscaping would run vertical to the western brick wall. The public alley, the existing wall and the landscaping would be used to screen and buffer the site's outdoor activities from the existing homes that are located to the west of the property.

The type of facility that is proposed would generate outdoor activities during the day and night. For example, children playing on the site would produce noise; automobiles and entering and leaving the site on three different shifts could be disruptive; and there would be an increase in pedestrian activity in the neighborhood, especially in the evenings and on the weekends. However, in OP's opinion, these activities should not have any significant adverse impacts on the properties that are located close to the site or in the neighborhood.

OP is of the opinion that the proposed use would be in harmony with the general purpose and intent of the Zoning Regulations and Map. The site has had a long history of being used as an institutional facility. Based on the applicant's submission, the site has been used for institutional purposes for at least 75 years, although it has been vacant since 1987.

OP believes that the 14 permanent parking spaces and the reserved parking spaces will be adequate to serve the proposed facility. OP stated that the number of parking spaces proposed would serve the needs of 61 percent of the employees who would be working during the day when most activities would be in progress and the parking demand would be the greatest.

With regard to locating the proposed facility within 1,000 feet of the existing home for the elderly, OP stated that although the ages of the people and the mission of the facilities are different, the intent of both programs is to provide needed

services for a specific segment of the city's population. OP is therefore of the opinion that the two facilities can coexist harmoniously in the neighborhood.

In its recommendation to the Board, OP stated:

The proposed youth residential care home would provide a needed facility for District of Columbia children who require therapeutic services. The documents that are located in the case file indicate that the applicant has spent a considerable amount of time addressing issues associated with parking and traffic, the cumulative impact of two community residential facilities within 1,000 feet of each other, and ways to harmoniously integrate the facility into the neighborhood. The Office of Planning is of the opinion that the institutional facility would not create any significant adverse impacts that would be detrimental to the neighborhood or the public good. We, therefore, recommend approval of this application with the following conditions:

1. No more than 24 youths should reside on the premises at any one time.
2. The total number of staff to be employed at the facility should not exceed 60 people at any one time.
3. Trash should be collected from the exterior of the premises at least two times each week.
4. Procedures should be identified for the disposal of medical waste.

The Office of Planning referred this application to the following District government agencies for review and comment:

1. Department of Public Works;
2. D.C. Fire and Emergency Medical Services Department;
3. Department of Consumer and Regulatory Affairs;
4. Metropolitan Police Department;
5. Department of Finance and Revenue;
6. Department of Housing and Community Development;
7. Department of Recreation and Parks;
8. Department of Human Services; and
9. Office of Community-Based Residential Facilities.

56. By memorandum dated September 25, 1991, the Department of Public Works (DPW) responded to the referral and addressed the transportation impact of the proposal.

The Department of Public Works stated that the applicant is proposing to use the subject premises as a Youth Residential Care Home. Although the exact number of residents and staff is undetermined, the applicant anticipates that there will be 20 to 24 residents, 15 day treatment clients, and a staff of 52.

DPW stated that the applicant is providing 15 off-street parking spaces for staff members and visitors. In addition, the applicant will add this facility to the DHS shuttle bus route. There are metrobus routes on Q Street and Wisconsin Avenue which are within 2 blocks of the facility. Parking in the neighborhood is regulated by the Residential Parking Permit (RPP) program.

The applicant anticipates that the facility's staff will consist of a day shift, an evening shift, a weekend shift, and a night shift. The day shift is anticipated to be 23 personnel, the evening shift to be 12, the weekend shift to be 12, and the night shift to be five. Furthermore, the applicant has conducted an in-house survey which shows that 31 percent of the staff will ride metrobuses to work. A reserved government vehicle parking zone for three cars and one van between the hours of 8:00 a.m. to 6:00 p.m., a no parking zone at the entrance of the building for passenger drop off, and a bus zone for school buses are being planned for R Street to further address the transportation issue.

The Department of Public Works concludes that only minimal traffic impact will result from this project. Therefore, the Department has no objection to the proposal.

57. By memorandum dated September 6, 1991, the Office of Community-Based Residential Facilities (OCBRF) stated that it supports the development of residential treatment centers for children and the initiative to reduce dependence on out-of-state treatment facilities for District children.

The Hurt Home has served for many years as a Community Residence Facility. The conversion of the home to a residential treatment center will provide the District with a local resource to reduce the need of sending children to distant facilities for residential treatment services.

Finally, the office pointed out that there is one facility within a 1,000 feet of proposed CBRF located at 1515 32nd Street, N.W.

58. By memorandum dated August 23, 1991, the Department of Recreation and Parks commented on the subject application. The Department stated that Montrose Park, operated by the National Park Service, is located across the street from the subject property. This park serves local park functions for this neighborhood and can easily accommodate supervised recreation for the facility's residents.

The closest District of Columbia operated recreation facility is Georgetown Recreation Center, located approximately 5 blocks to the southwest on Volta Place and O Street, N.W. This recreation center can also adequately service the treatment center's recreation and leisure needs.

The Department stated that it has no objection to the application since the proposed use would likely have no negative impact on District of Columbia recreation facilities or on federal parkland.

59. By letter dated August 16, 1991, the Metropolitan Police Department stated that the property is located in the Second District and is patrolled by Scout Car 75.

The Police Department further stated that based upon its review of the application, it does not appear that the change proposed by this application will affect the public safety in the immediate area or generate an increase in the level of police services now being provided. Accordingly, the department does not oppose this application.

60. By letter dated October 2, 1991, Advisory Neighborhood Commission (ANC) 2E reported its views on the subject application. The ANC stated that it heard a presentation on the application by representatives of the Commission on Mental Health Services and considered the comments of residents in attendance at the public meeting. Two motions were offered, both of which failed (3-3-0) for lack of a majority. The motion to oppose the application was based on the view that the applicant failed to demonstrate that there are no other alternatives for such a facility as required by the Zoning Regulations. Opponents were also concerned that the facility will have negative impacts on traffic, parking, public recreation facilities, and neighborhood security.

Those in support of the application moved for its approval by the ANC and requested that the Board grant the application with the following four conditions:

1. that the age range of the residents will be limited to children six to 12 years old;
2. that the staff to client ratio will be approximately 1 to 2;
3. that the certificate of occupancy for the facility will not exceed 60 percent; and
4. that the premises be used as the primary recreation area for the facility.

No one appeared at the hearing to testify on behalf of the full ANC.

61. The applicant's statement indicated that the District has kept ANC 2E fully informed of all activities involved in developing this project. Before the purchase of the Hurt Home was finalized, the Commission sent notification to the ANC on August 14, 1987, concerning the District's plans for the property. On September 15, 1987, the Director of the Department of Human Services wrote to the chairman of ANC 2E to provide information and a program description.

On May 30, 1991, a letter was sent to ANC 2E informing the ANC of the Certificate of Need application and the District's intent to seek zoning and historic preservation reviews. A follow-up letter was sent on June 11, 1991 in response to ANC requests for information. In addition to the correspondence directed to the ANC, there have been numerous telephone conversations among the ANC and ANC staff. Additionally, the public information campaign has always included distribution of material to the ANC representatives. On August 12, 1991, District officials attended the ANC 2E meeting to make a presentation of the project. However, the applicant stated, the ANC has taken a position in opposition to the opening of the program.

The applicant noted that in the early stages of the project's development, District officials agreed to enter into an agreement proposed by ANC 2E which would have provided for community participation in the development and operation of the project. The ANC then rejected its own proposal and opted instead to oppose the project through litigation and opposition mounted at administrative reviews. Therefore, District officials began working with other concerned Georgetown citizens who quickly formed the Hurt Home Advisory Board. The Advisory Board has worked closely with the District officials, providing community input over the past four years.

62. The Advisory Neighborhood Commissioner who represents Single Member District (SMD) 2E-06 testified on behalf of the SMD 2E-01 Commissioner and her own constituents. She expressed opposition to the application and raised a number of concerns. These concerns are similar to those addressed by other opponents and are therefore summarized in the "opposition" portion of this order.

63. The applicant stated that the proposal was reviewed by the National Capital Planning Commission (NCPC) Coordinating Committee on September 13, 1989. It had been coordinated with all agencies represented, including the NCPC, the D.C. Office of

Planning, the D.C. Department of Public Works, the National Park Service, the General Services Administration and the Washington Metropolitan Area Transit Authority.

On October 5, 1989 the NCPC reviewed and approved the preliminary and final site and building plans for the renovation of the Hurt Home and made the following evaluation:

...the proposal has been evaluated with respect to its consistency with the Comprehensive Plan for the National Capital. It has also been specifically reviewed in terms of its impact on the interests and functions of the Federal Establishment in the National Capital. The proposed site improvements and building renovation do not have an adverse impact on Montrose Park, Rock Creek Park or any other Federal lands in the vicinity. The building, which staff believes to be a contributing element to the Georgetown Historic District, is not proposed to be altered on its principal R Street facade.

The relatively minor exterior changes, confined to the rear of the building, are compatible with the height, scale, materials, color, texture and character of the Hurt Home. The project will not generate significant traffic levels, and adequate parking is proposed for employees and visitors. Therefore, staff recommends approval of the preliminary and final site and building plans for the renovation of the Hurt Home.

64. The applicant stated that the Old Georgetown Board (OGB) is a subcommittee of the Commission of Fine Arts (CFA), and is responsible for reviewing projects within the Georgetown Historic District. The Hurt Home's landscaping and site plan was reviewed by the OGB on July 11, 1991, at which time the board members expressed concern about aspects of the proposed parking plan. The applicant responded with a revised proposal at the OGB hearing on September 5, 1991. At that time the project was approved unanimously. The board members commended the applicant for responding to all of the OGB's concerns and recommendations, and referred the project to the full CFA.

On September 19, 1991, the CFA approved the project as recommended by the OGB. The CFA will send its recommendation to the District's Historic Preservation Review Board, which is expected to accept the CFA's recommendations without an additional hearing.

65. The applicant's architect testified that the proposed plans were referred to the Historic Preservation Review Board. However, at the time of the Board of Zoning Adjustment hearing, no action had been taken. The Office of Planning representative indicated that the HPRB has delegated to the Commission of Fine

Arts any review on the Georgetown Historic District to avoid duplicity of review. Since the CFA has approved the application, the HPRB will not conduct a review. The OP representative further indicated that the application has received all of the necessary design approvals.

66. The applicant stated that the project has received both public and private support from mental health advocate organizations. In February 1991, the American Psychological Association awarded the Commission on Mental Health Services a gift of four thousand dollars (\$4,000.00) to benefit education and recreational programs at the Hurt Home. In June 1991, the Washington Psychiatric Society, a branch of the American Psychiatric Association, sponsored a public forum to resolve concerns and questions about the Hurt Home project. In addition, the Commissioner has received more than 30 letters supporting the Hurt Home project from mental health service organizations, churches, hospitals, civic associations and individuals.

67. The Board heard testimony in support of the application from individual neighbors as well as from the chairman of the Hurt Home Advisory Board and a member of that board's Physical Plant Committee. The views expressed in the testimony supporting the application can be summarized as follows:

The use of the subject site. Supporters testified that to use the Hurt Home as a residential treatment facility for children is appropriate. They believe it is better than using the site for a bar or other commercial purpose. Georgetown will benefit from the use because the physical attributes of the Hurt Home will remain intact. The government will preserve this building. This is not the case with some of the other large properties in Georgetown. The supporters also expressed the view that Georgetown residents must accept its share of CBRFs for a more even distribution of such facilities throughout the city. The children are the responsibility of all District of Columbia residents.

The children's needs. Supporters of the proposed use testified that the money set aside to establish this facility will be well spent. They point out the fact that these children need early intervention. They believe that providing residential care in the Georgetown community is the treatment best suited to work these children back into normal daily life. They will be able to go to the neighborhood library, attend concerts at Ellington, and under supervision, shop in stores in Georgetown. The neighbors in support feel that people of privilege should not deprive others of the same benefits they have had. This will simply be a small facility for children placed under good supervision in a beautiful setting. Supporters maintain that the children will benefit from this environment.

Race and fear factors. Supporters of the application are concerned that opposition is based to some extent on the likelihood that non-White children will reside at the facility. Supporters maintain that racial factors present no justification for opposing this use. They point out that while crime and violence are common place in the District of Columbia, violent criminal activity is not a daily occurrence in Georgetown, and a group of six to 12 year old children will not bring such activity to this community. Supporters believe that area residents will be more accepting of the idea once they overcome their fear.

Communications between CMHS and the Hurt Home Advisory Board. A member of the Physical Plant Committee of the Hurt Home Advisory Board testified that the CMHS officials and architects involved with the project have been very cooperative in their response to the Advisory Board in its efforts to resolve issues related to the building, site development, landscaping, parking and the visual impact on the community. He stated that the overall performance of CMHS, with regard to the successful development of the physical plant, has been exemplary. They will serve as a model for other government agencies involved with facility development throughout the city.

Other neighbors in support. Parties who testified in support of the application maintain that there are many other neighbors who support the project. One witness testified that the Citizens Association of Georgetown, which opposes it, only represents between 1,200 and 1,500 (13% or 14%) of the approximately 12,000 people living in Georgetown.

68. The Citizens Association of Georgetown, by statement submitted on October 9, 1991 and through testimony at the hearing, expressed opposition to the application. The Association maintains that the applicant has failed to meet the requirements of Section 219 of the Zoning Regulations.

A. The Association argues that the applicant has failed to demonstrate that its program goals and objectives could not be achieved by a facility of a smaller size at the same location.

The opponent points out that on various occasions, District officials have represented that 37 latency aged children were currently being treated in residential centers, of which only 10 would be eligible for the Hurt Home. Applying its own numbers, by its own admission, the District cannot demonstrate the need for 24 beds at this site.

The District justifies the size of the facility by citing the 1986 Final Mental Health Implementation Plan. However, the Plan relied upon by the District does not call for establishment of a 24-bed residential treatment facility in a residential neighborhood.

Indeed, the one option delineated in detail in the Plan is to locate the residential treatment facilities for children and youth on the grounds of St. Elizabeths. This option, opponent argues, was never seriously or responsibly considered by District officials.

It is the Association's contention that the District government has given no consideration to analyzing whether programatic goals and objectives could be achieved by serving a smaller number of children at this proposed site. The application lacks evidence of such a consideration.

B. The Association maintains that there are other reasonable alternatives to meet the program needs of that area of the District.

First, CAG emphasizes that the State Health Planning and Development Agency (SHPDA) recently approved 120 new beds to meet the demand for services for children aged 5 to 17 or 18. Capital Psychiatric and Fort Lincoln will have 60 residential treatment center beds. Riverside, located at Good Hope Road, S.E., will also have 60 residential treatment beds. In light of those CON approvals, the additional Hurt Home beds costing \$250,000 each in capital expenses alone, represent an unreasonable and wasteful expenditure. The most reasonable alternative would be for the District to sell the Hurt Home and recoup its losses for the benefit of taxpayers.

Second, CMHS currently contracts with at least seven residential treatment centers in the Metropolitan area, representing 422 beds available to latency-aged children. The FY 1990 CMHS report on annual expenditures and placements shows annual costs for residential treatment services ranging from \$10,865 to \$171,550, with six of the seven existing and currently available alternatives in the Metropolitan area costing significantly less than the Hurt Home (whose projected operating cost per bed - excluding recovery of the enormous capital investment - is \$100,375). The opponent believes that since the District also plans to contract the operation of the Hurt Home to a private contractor, there is simply no justification for public ownership of the facility. Therefore, another reasonable alternative would be to pursue comparable arrangements with available and interested providers.

Third, the opponent argues that, the most cost effective of the reasonable alternatives would be to pursue alternative available sites. At a minimum, these include: St. Elizabeths (175 acres); Fort Lincoln (195 acres); the U.S. Soldiers' Home (170 acres); and Fort Haven. These identified areas represent optimal locations for an institutional facility of this type.

Finally, the opponent argues, Section 219.7 refers to alternatives to meet the program needs "of that area of the District." The Office of Planning Report, in its "Site and Area Description," clearly delineates "that area of the District" as the Georgetown community. But the District Government has never asserted that the Hurt Home will serve the program needs of Georgetown. But, even if one were to depart from the Office of Planning's definition of area and accept that "that area of the District" means the entire geographic span of the District, the Hurt Home project still cannot pass muster. As has been shown, other reasonable alternatives exist.

C. The opponent argues that in analyzing the cumulative effect of the Sevier House and the Hurt Home, the Board must consider the present reality rather than potential future occurrences. The applicant asserts that, based on reports, the Sevier House may close in April 1992. However, the opponent argues that the closing of the Sevier House is far from certain. Efforts are being made to maintain this facility in its current state. Therefore, the Board's determination should be based on the current existence of this facility rather than its possible closing.

The opponent also argues that the Board should focus on the present rather than the past with regard to these facilities. The applicant asserts that the Hurt Home once housed up to 49 residents and that both facilities coexisted in the same proximity for years. They emphasized the point that the total number of residents of the two facilities would be lower than in past periods when the Hurt Home was operational. The opponent maintains that these representations are not substantiated and, in fact, are misleading.

To support this argument the opponent points out that the last Certificate of Occupancy issued for the Hurt Home was for a maximum of 15 residents. Moreover, when the Hurt Home closed, there were fewer than ten adult residents living there. Given these facts, the opponent argues, it is irrelevant that the facility once had a capacity of 49. The opponent argues further that the new proposed use is substantially different. It promises to have a detrimental and substantial impact on the immediate neighborhood. Assertions that the cumulative effect of the Hurt Home and Sevier House will not have an adverse impact on the neighborhood are conclusionary and factually unsupported in the application. Contrary to the application's assertion, the opponent argues that the cumulative effect of the Hurt Home operation, standing by itself, will have an extraordinarily adverse impact on this quiet residential area.

D. The opponent argues that the site's off-street parking is inadequate to provide for the needs of occupants, employees and visitors to the facility as required by Section 219.3 of the Zoning Regulations. The opponent argues that the applicant's assertion that 14 spaces will be adequate amounts to mere speculation. The

opponent points out that the District sought additional parking spaces when it presented its application to the Commission of Fine Arts and that the original plans called for 17 on-site parking spaces. The Association maintains that 14 on-site parking spaces are simply inadequate to cover employers working three eight-hour shifts, families, visitors, and a full complement of program support and service personnel. Moreover, the application's staffing plan fails to acknowledge or count additional food service, housekeeping and maintenance staff who will be working at the Hurt Home.

CMHS represents that a substantial portion of its staff, namely one-third, travels to work by public transportation. The opponent maintains that this representation is based on no evidence. Although the District claims to base its number on a survey of current CMHS personnel, the fact is that the District intends to contract out the program. The transportation patterns of current CMHS staff are, therefore wholly irrelevant.

Moreover, contrary to what the District wants the Board to believe, public transportation is not easily accessible to the Hurt Home. The nearest metrorail stop is Foggy Bottom, and R Street is not a metrobus route. Particularly given the lack of convenient access to public transportation, the on-site parking is woefully inadequate.

In making its determination, the applicant urges the Board to take into consideration that the Zoning Regulations require only two spaces for a community residence facility for up to 15 persons. However, the opponent believes that the better analogy is to an institutional hospital, where the correct standard to be applied in an R-1 zone is one parking space for each bed. See 11 D.C.M.R. Section 2101.1.

The Citizens Association of Georgetown strongly objects to the proposed reserved parking spaces in front of the Hurt Home. Given the competitive and heavy neighborhood and tourist demands for this premium street parking, under no circumstances can this apportionment by the District Government be justified for restricted parking or a "no parking" zone. Therefore, the District's request should be flatly denied.

E. The opponent maintains that the applicant has not demonstrated that the proposed facility meets all applicable code and licensing requirements. (11 DCMR 219.4). The opponent asserts that the mere representations of an intent to be accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO), and an intent to be fully licensed and in compliance with federal standards necessary to obtain Medicaid matching

reimbursement, fall far short of actual achievement of such licensing. Further, the opponent states that the Hurt Home does not even have a Certificate of Need.

Indeed, the opponent argues the facts are that to date the District Government has never achieved receipt of matching federal Medicaid dollars for children institutionalized in these kinds of residential facilities. It is an unwarranted leap of faith to assume the Hurt Home will be the first. Therefore, Board approval should be withheld until the requisite approvals are acquired.

F. The opponent argues that the facility will have an adverse impact on the neighborhood because of noise, traffic and operations. The opponent asserts that the traffic and parking analysis submitted by the applicant is self-serving and conclusionary. Contrary to what the applicant asserts, in its analysis, neighbors report annual volume increases in the heavily-trafficked R Street corridor. The opponent stated that the normal noise of children laughing, yelling, playing and crying in the neighborhood will represent a substantial increase in noise over what was posed by the blind adults who previously resided in the Hurt Home. Further, the quantum addition of staff, children, families, employee's friends, children's friends, and service and maintenance personnel who will invade the quiet residential neighborhood is sorely underestimated by the applicant. However, this is a source of great concern to the residents.

G. The opponent argues that the applicant is obligated to abide by the Zoning Regulations and should not be afforded special treatment because of the substantial amount of renovation that has occurred at the site.

H. The opponent argues that the application has not been submitted to "all relevant District Departments and Agencies" as required by Section 219.8. The application is therefore incomplete. The opponent asserts that while the application lists agencies and entities with whom CMHS has worked, this listing falls short of meeting the standards of impact assessment and written reports from "all relevant District Departments and Agencies." Moreover, the opponent asserts, the Office of Planning report is sorely deficient in its effort to meet the inclusive mandate of this regulatory standard. The opponent urges that until all relevant District departments and agencies respond, the application is incomplete and cannot be granted. (Emphasis in original).

I. The opponent asserts that the applicant appears to have ignored requirements imposed by the Commission of Fine Arts' Old Georgetown Board. Neighbors who have examined the original plans and compared them to the required CFA modifications report that District contractors have implemented the original plans, not the required revisions. For example, the District came forward and

presented a new site plan for the parking lot (portions of which are appended in the application at Exhibits D and E). Subsequent, to obtaining the Old Georgetown Board's approval, the District in fact proceeded to construct the spaces it had agreed to remove. The opponent argues that until the District complies with the CFA changes, the Board should deny the application.

J. Finally, the Association argues that the project should not be allowed to go forward because the District has failed to submit a required environmental impact statement. The assessment is needed to address neighbors' concerns about environmental hazards from, inter alia, the District government burying a 550-gallon underground fuel oil storage tank, electrical power upgrades, increased pollution and traffic congestion, and the devastation of green land on the property.

69. While the Association vehemently opposes the application, it requested that the following conditions be made part of the Board's order should the application be granted:

- A. Before commencing operations, the proposed facility must become licensed, and meet all applicable regulatory and credentialing requirements. This includes, but is not limited to:
- obtaining a Certificate of Need (CON);
 - complying with various applicable D.C. Code requirements;
 - obtaining appropriate credentials and licensing for all staff;
 - obtaining Medicaid certification using the standards for an in-patient facility in order to qualify for federal Medicaid reimbursement; and
 - achieving and maintaining accreditation by the Joint Commission for Accreditation of Healthcare Organizations (JCAHO).
- B. The maximum number of residents shall be 24.
- C. The facility shall serve latency-aged children only, up to a resident's twelfth birthday. No child over 12 years of age will be housed in the facility. No child who poses any threat of harm to himself or others shall be admitted to the facility.

- D. The maximum number of out-patients served on a daily basis shall be 15, and the maximum combined enrollment in the residential and day treatment programs shall be 39 children.
- E. Before commencing operations, the District must develop a community security plan acceptable to the ANC and the Citizens Association of Georgetown. The District's operation of the Hurt Home must comply with this Security Plan at all times.
- F. The out-patient program shall not begin before 8:00 a.m. and shall end no later than 4:00 p.m.
- G. The staff supervising and attending residents and out-patients, exclusive of food service and maintenance personnel, shall at all times be in a ratio of not less than 1 to 2.
- H. Trash collection, even if handled under contract, must occur a minimum of twice a week, and more frequently if necessary.
- I. The exterior grounds of the Home shall be fully illuminated at all times from dusk until dawn, in such a manner as to minimize visibility from neighboring residences.
- J. The District shall maintain the Hurt Home and grounds in good condition at all times, and operate the facility in a manner that ensures the safety and health of the children.
- K. Commercial deliveries, trash collection, and maintenance services may not commence prior to 8:00 a.m. and may not occur after 5:00 p.m., except in an emergency.
- L. No audio, video or other amplified sound equipment shall be played before 9:00 a.m. or after 8:00 p.m.
- M. A new Community Advisory Committee shall be constituted as an alternative to the Hurt Home Advisory Board and shall consist exclusively of neighbors, Citizens Association of Georgetown representatives, and ANC representatives.
- N. No existing trees on the property will be removed, and any existing trees that die will be replaced. Additional plantings of trees or shrubs shall be at least 6 feet in height, forming a screen, and planted inside the entire brick wall along the western border of the property.

- O. The District shall use the Hurt Home grounds as the primary recreational area for the children. Use of Montrose Park and other community recreational areas shall occur under stringent staff supervision and only on an exceptional basis.
- P. The Home shall at all times have an operational fire detection and alarm system connected to all parts of the building.
- Q. Operations at the Hurt Home may not commence until the District complies with the Environmental Impact Statement requirements set forth at D.C. Code Section 6-981 et seq.
- R. The only place of ingress or egress for residents or out-patients shall be the front door on R Street, which shall be attended at all times when not locked. All other doors in the building will be kept locked at all times.
- S. There shall be no reserved parking places in front of the Home. Buses or vans delivering out-patients, staff, or goods shall not be allowed to park in the vicinity of the Home longer than necessary to pick up and deliver.
- T. Approval shall be for a period of one year from the date of the final order.

70. Other persons in opposition to the application testified at the hearing and expressed their concerns. Their testimony can be summarized as follows:

The need for the facility. Opponents to the application testified that they are not insensitive to the fact that these children need treatment. They contend, however that the expenditures for acquiring and renovating the property are exorbitant. This is especially true in view of the applicant's testimony that only about ten children presently at other facilities are candidates for the Hurt Home. Opponents believe that \$4.9 million is too much money to spend on such a small pool of children. Opponents point out that the government will have to pay the salaries and benefits of the staff and professionals regardless of the number of children at the facility. It is the opponents' view that with such a large expenditure, more children should be served.

One opponent, who is an expert in the health planning field, testified that these children could be treated at other facilities such as Fort Lincoln, Riverside, Capital Psychiatric Residential Treatment Center, St. Elizabeths Hospital, the Episcopal Center, The Soldiers' Home, Forest Haven, the Grafton School, Fairbridge,

Villa Maria, St. Gertrude's School, Edgemoade or the New Dominion School. She testified that there are contracts in existence to treat these children in this area. She pointed out that the District Health Planning and Development Agency has approved two residential treatment centers to treat these children - one is a 60-bed facility at Fort Lincoln and the other is a 60-bed facility on Good Hope Road in Southeast Washington. This requirement was made a condition of approval of their certificates of need.

Each of these facilities is available at the same price as the applicant is proposing for the Hurt Home. The witness testified that Ft. Lincoln has 195 acres that could be used to build a large facility. The Soldier's Home property contains 270 acres. Forest Haven is about to be closed by the District and would be available. She maintains that the applicant did not consider these reasonable alternatives before applying for the Hurt Home facility.

A resident of Georgetown testified that the applicant failed to address Sub-section 219.7 of the Zoning Regulations which requires the applicant to show that there is no reasonable alternative to meet the program needs of that area of the District. (emphasis in original). He stated that the applicant presented no evidence that any child from Georgetown will use the facility. He noted that in discussing transportation, the applicant testified that some people consider Georgetown to be "too far". This opponent points out that the OP report describes "the area" as the Georgetown neighborhood (rather than the city in general). However, he testified, the statute refers to the area as the District. The opponent requested that the Board make a determination on this provision of the Regulations.

Appropriateness of the location. The opponents testified that to use the subject property as proposed would be inappropriate for a number of reasons. Opponents testified that this is a residential neighborhood and there are already problems with crime and violence in the area. They feel that having emotionally disturbed children live in the area will present a danger to the community because these children will bring different types of behavioral problems with them. The residents feel that their own safety will be jeopardized because the doors of the facility will be unlocked, the building will not be adequately secured. The safety of the neighborhood could be threatened if a child escaped. The residents also feel that the children will not be adequately supervised. Based on consultations with psychiatrists who practice at other private residential facilities, one opponent pointed out that these children should not go out unescorted.

One opponent testified that his opposition is not based on racial prejudice. He feels that it is better to educate these children where they really live rather than to take them to a new

area and later return them to their old environment. He believes that changing the environment will make the ultimate adjustment more difficult.

Opponents are concerned about the safety of the children residing at the Hurt Home because the area is very congested. They testified that R Street is well travelled and often cars go through the stop sign without stopping, and drivers ignore pedestrians in the crosswalk.

Opponents are also concerned that the proposed use will bring more traffic to the area. Opponents testified that the facility is not located in close proximity to public transportation. Also, buses do not come frequently during rush hour. Therefore, persons coming to the facility are more likely to drive, and parking conditions are too poor to accommodate these additional cars on the street. Commuters presently take advantage of the lack of enforcement of residential permit parking restrictions. One opponent was concerned about how many people can get into the Hurt Home parking lot without blocking traffic and out of the lot without blocking parking spaces. He is also concerned that the operators of the facility will be unable to control when deliveries to the site will occur because carriers tend to do as they please.

Adverse impact. The neighbor residing next door to the site testified that the treatment center is a very different, more intense use than the Hurt Home for the Blind. He stated that the applicants should not locate the facility in a residential neighborhood because the Zoning Regulations were set up to preserve the residential character of these neighborhoods. These residential zones are in great peril because institutions continue to be added. This opponent believes that institutions are inconsistent with residential use.

The adjacent neighbor further testified that the Hurt Home for the Blind was a purely residential, low staff ratio use that began when there were no traffic or parking problems. On the other hand, the proposed use is for a large, very active, staff intensive, 24-hour institutional facility. It is not merely a continuation of an historic institutional use as the applicant states. This use is very different.

The neighbor also testified that the children will create noise in the area.

Finally, he testified that, contrary to what the applicant stated, neither a terrace nor a wall has been built to block the parking area from view.

Discontent with government officials. Some opponents were concerned about the way that government officials have handled the Hurt Home transaction. Opponents feel that the community was not adequately informed about the purchase of the facility or consulted about the proposed use. Opponents are concerned that what is being constructed is not what was ultimately approved by the Old Georgetown Board. Opposing neighbors feel that they have been misled with regard to approved plans. Further, opponents object to the applicant's removal of trees from the property.

Opposing neighbors testified that the government officials are unaccountable to taxpayers and evasive and contradictory in answering questions.

Strength of the opposition. Opponents testified that there is very strong community opposition to this project. One opponent testified that many people will not speak out against the project because they do not wish to be perceived as citizens against the children. However, many neighbors were not only willing to express their views, they also made financial contributions to the opposition group. Over 1,000 contributions were received. One opponent pointed out that at a meeting called to discuss the application, interested persons filled a church. When supporters were asked to stand, only three people stood up.

An opponent testified that the tie vote at the ANC meeting does not accurately reflect the sentiments of the community. At that meeting, one of the commissioners stated that he was voting with the chairman against the will of his constituents.

Another opponent testified that the Hurt Home Advisory Board is not representative of the Georgetown community because the board is made up of ten people, four of whom are not Georgetown residents. Counsel for the Citizens Association of Georgetown explained that the opponents wish to establish a new Community Advisory Committee because the Hurt Home Advisory Board is made up of people who were originally supporters of the project. The opponents believe there has to be a forum within which problems can be dealt with promptly. It is unlikely that the current Advisory Board will play that role.

72. The Board received numerous letters in support of the application. Also several letters opposing the application were submitted into the record.

73. Counsel for the applicant responded to the concerns raised by the opponents.

The need for the facility. The applicant's Counsel stated that there is a great need for the facility. Although there are some children currently out of state who will not be brought to the

Hurt Home, there are other children in need of this facility. There are children receiving acute care at the hospital; there are children in foster homes waiting for this kind of facility; and there are children on Dr. Younes' residential placement unit waiting list. Consequently, there are many children in need of these services.

The applicant's Counsel stated that both the State Health Coordinating Council and the staff of the State Health Planning Development Agency recommended approval of the District's application for a Certificate of Need.

Counsel for the applicant stated that locating the treatment facility in a residential neighborhood has been determined by clinicians to be the best way to integrate children back into the community and normalize their lives. The movement in treatment is away from institutionalization, and toward a community-based system as mandated by the Congress when it approved the final mental health plan. This program is a necessary part of the continuum of care for these children.

74. Alternative Sites. Regarding the nine alternative sites proposed by the opposition, the applicant's counsel stated that not one of them is a reasonable alternative to the Hurt Home. Some of them are two to four hours away and none of them serve the target population of the Hurt Home. Some serve older children or mentally retarded children. Some are not medicaid vendors. They are inaccessible by public transportation or they are not open 365 days per year. Two of the facilities have yet to break ground for construction.

75. The applicant's Counsel stated that the facility has a capacity for 49 persons. It would not be financially feasible to establish a program for only 15 persons. It is not cost effective for the applicant not to fully utilize the building. She further stated that the resources for children and for treatment of the mentally ill are very limited in this city. To ask the District to only partially use a building that was built to accommodate many more would be very unreasonable and would make it difficult for the District to operate the facility. Therefore, the program goals cannot be achieved by a facility of a smaller size at the subject location.

76. Meeting the program needs of Georgetown. The applicant's Counsel responded to one opponent's inquiry as to whether this facility will serve this area of the District. The applicant points out that the District will not be placing treatment centers in every ward. This will be the only residential treatment center of its kind in the entire city. It will serve all of the District's children including any that are referred to it from the Georgetown community.

77. The Sevier House. Counsel for the applicant stated that the applicant did not rely only on the news article that reported the possible closing of the Sevier House. The applicant confirmed this information with the owners. The applicant asserts that even if the Sevier House does not close, the cumulative effect of operating the two facilities will be minimal.

The applicant acknowledges that over time, the number of residents at the Hurt House for the Blind dwindled, and that establishing the proposed use will have some impact on the area. However, the applicant maintains that the impact will not be adverse because the program is self-contained. The children will eat, sleep and be educated in this facility. They will not run free through the neighborhood. Whenever they are out, they will be supervised. The staff to child ratio will change depending on what the children are doing. The occasional use of Montrose Park by these children will not preclude use of the park by others.

78. Parking. Counsel for the applicant indicated that the applicant changed the number of on-site parking spaces from 17 to 14 to obtain the approval of the Old Georgetown Board and the Commission of Fine Arts. The applicant defends its use of the staff transportation survey because it is the only way to predict how future staff members might travel. Since the contractor has not been selected, there is no way to be certain. However, the applicant maintains that the contractor will be required to have a carpool or van pool if there are too many employees who would need to drive. Therefore, the applicant believes that the number of spaces will be sufficient.

The applicant maintains that the opponents cannot attribute all of the parking problems in the area to the proposed facility. Georgetown has many features, such as stores and night life, which attract cars and create the congestion and parking problems.

79. The construction plans. Counsel for the applicant stated that the rear wall has not been constructed on the property yet because this wall was an addition to a very recent change order to get the approval of the OGB. The change order simply has not caught up to the contract. This lag time accounts for anything that has been approved but has not been done with regard to construction. The applicant assures the Board that it will meet the requirements of the OGB.

80. Tree removal. By letter dated October 29, 1990 to the Physical Plant Committee of the Hurt Home Advisory Board, the Commissioner of CMHS addressed the issue of tree removal and the contract plans. In this letter the applicant stated that the trees along the front of the building were removed in order to upgrade the underground utilities that service the building. This included upgrading the electrical service from R Street, installing

electrical vaults by PEPCO, and separating the site storm sewer and sanitary sewer lines, which included the installation of new underground storm sewer lines to carry off water from the roof drainage system. This work is necessary to comply with the various code requirements as they affect the renovation of the building. In the rear yard of the site, trees were removed in order to consolidate a parking and service area closer to the service entrance.

The applicant indicated that DPW and CMHS are committed to the restoration of all trees and shrubs with replacements of the same species and comparable size. CMHS indicated that it would be working closely with the Hurt Home Advisory Board's Physical Plant Committee, AEPA Architects, the Department of Public Works and the Contractor to develop a plan that will enhance the building, site and streetscape. Further, CMHS would urge that all replacement trees and shrubs approximate the size of the original landscaping as closely as possible, within the terms of the contract. In the event that the contract provisions are not adequate to ensure plantings of comparable size, CMHS will obtain plantings of comparable size and plant them using CMHS Grounds Unit resources.

81. The Advisory Board. The applicant also objects to CAG's contention that another group is needed to address the concerns of opposing neighbors. The applicant maintains that the Hurt Home Advisory Board has been an open board and has invited people to join. Many of the opponents could have participated to have a greater role in the planning.

FINDINGS OF FACT:

Based on the evidence of record the Board finds as follows:

1. Fourteen parking spaces will be provided at the rear of the site. A brick wall will be constructed to screen the parking spaces from view.
2. Various modes of transportation will be used by employees and visitors. Most visitors will come to the site in the evening when fewer staff persons are at work. Those visitors who drive can use the vacant parking spaces on site. The 14 parking spaces at the rear of the site will be adequate to meet the needs of employees and visitors. The reserved parking space to be located in front of the property will meet the needs of the 15 children who will be brought to the site by van for the educational program only.
3. The proposed facility will meet all applicable code and licensing requirements. The applicant also intends to fully comply with the requirements of the Commission of Fine Arts.

4. Traffic conditions in Georgetown are very congested. The applicant's facility will not contribute significantly to the current traffic congestion because a small number of employees will work at the site at each shift, a small number of visitors will come to the site, and public transportation, a carpool or van pool will be used, as necessary, to assist with transportation.

5. Operations at the site will be self-contained. Most of the operations will take place inside the building, and noises that occur inside will not be heard by neighbors. Noise made by the children who are on the grounds will be buffered by the brick wall, by landscaping, and by distance between the site and adjacent properties.

6. The applicant will schedule deliveries so as to minimize the impact of noise from delivery trucks. The brick wall at the rear will buffer nearby properties from noise created on the parking lot.

7. The front entrance to the facility will be staffed and persons who come to the facility will be required to identify themselves. When the front entrance is not staffed, the door will be locked. Security screens will be placed on the windows to protect the children.

8. The children will be closely supervised. The staff to child ratio will be appropriate for the particular activity.

9. Some activities will occur away from the site. Use of neighborhood facilities by these children will not preclude others in the neighborhood from using the same facilities.

10. There is only one other community-based residential facility within 1,000 feet of the subject property. Neither facility will have a great impact on traffic. The Sevier House is a quiet low intensity operation. The Hurt Home will be operated in such a way as to minimize impact on the neighborhood, and any noise will be buffered.

11. The primary goal of the proposed facility is to provide treatment within the District of Columbia for children who are residents of the District. There are children who need these services aside from those who are currently placed in out-of-state facilities. A smaller facility at the subject location would be inadequate to serve all of the District's children who need treatment.

12. The applicant considered alternatives to the proposed site but found that these alternative facilities are not reasonable or appropriate in one or more of the following areas: ages of the

children served, length of treatment provided, types of services provided, days open for service, distance from the District, or facility not yet constructed.

13. Since there are no other facilities in the District of Columbia like the one proposed, there exists no other reasonable alternative to meet the program needs of Georgetown or any other area of the District.

14. By memorandum dated July 30, 1991, the Board referred the application to the Acting Director of the Office of Planning. The Office of Planning subsequently referred the application to all relevant District departments and agencies for their review.

CONCLUSIONS OF LAW AND OPINION.

Based on the foregoing findings of fact and evidence of record, the Board concludes that the applicant is seeking special exception approval to establish a youth residential care home in an R-1-B District. The facility will be for more than 15 persons and will be located within 1,000 feet of another community-based residential facility. The granting of a special exception requires a showing through substantial evidence that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property. The provisions of Section 219, regulating Youth Care Homes and Community Residence Facilities, must also be met.

The Board concludes that the applicant has met the burden of proof. The Board is of the opinion that the application provides for adequate, appropriately located and screened off-street parking. The Board is further of the opinion that the parking provided will meet the needs of occupants, employees and visitors to the facility.

The Board concludes that the proposed facility will meet all applicable code and licensing requirements.

The Board is of the opinion that the facility will not have an adverse impact on the neighborhood because of traffic, noise, operations, or the number of similar facilities in the area.

The Board concludes that there is one other CBRF located within 1,000 feet of the subject site. However, it is the Board's opinion that the cumulative effect of the two facilities will not have an adverse impact on the neighborhood because of traffic, noise or operations.

The Board concludes that a facility for more than 15 persons may be approved since the program goals and objectives of the

District cannot be achieved by a facility of a smaller size at this location and because there is no other reasonable alternative to meet the program needs of this area of the District.

The Board concludes that the application was submitted to the Acting Director of the Office of Planning and referred to all relevant District departments and agencies.

The Board concludes that the proposed use is in harmony with the general purpose and intent of the Zoning Regulations and Map and will not tend to affect adversely the use of neighboring property.

The Board has accorded ANC 2E the "great weight" to which it is entitled. In light of the foregoing, it is hereby **ORDERED** that the **MOTION TO DISMISS IS DENIED**.

VOTE: 3-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to deny).

It is further **ORDERED** that the application is **GRANTED**, **SUBJECT** to the following **CONDITIONS**:


1. Approval shall be for a period of **THREE YEARS**.
2. The maximum number of residents shall be twenty-four. The maximum number of participants in the out-patient program shall be fifteen.
3. The number of staff shall not exceed sixty.
4. The staff to youth ratio shall meet the applicable standards of all appropriate regulatory agencies.
5. The applicant shall provide appropriate exterior monitoring and security lighting at the site. The illumination of such lighting shall be directed so as to be confined to the site to avoid the adverse impact of glare onto adjoining and nearby residential properties.
6. Trash pickup shall occur a minimum of twice per week.
7. Deliveries and trash collections shall not occur prior to 8:00 a.m. nor after 5:00 p.m., Monday through Saturday.
8. The grounds of the subject facility shall be kept free of refuse and debris and all landscaping shall be maintained in a healthy growing condition consistent with the residential character of the neighborhood.

9. Construction shall be in accordance with the site plan as approved by the Commission on Fine Arts.

VOTE: 3-0 (Sheri M. Pruitt, Paula L. Jewell and Carrie L. Thornhill to grant; Charles R. Norris not voting, not having heard the case).

BY ORDER OF THE D.C. BOARD OF ZONING ADJUSTMENT

ATTESTED BY:


MADELIENE H. ROBINSON
Acting Director

FINAL DATE OF ORDER: _____

AUG 27 1992

PURSUANT TO D.C. CODE SEC. 1-2531 (1987), SECTION 267 OF D.C. LAW 2-38, THE HUMAN RIGHTS ACT OF 1977, THE APPLICANT IS REQUIRED TO COMPLY FULLY WITH THE PROVISIONS OF D.C. LAW 2-38, AS AMENDED, CODIFIED AS D.C. CODE, TITLE 1, CHAPTER 25 (1987), AND THIS ORDER IS CONDITIONED UPON FULL COMPLIANCE WITH THOSE PROVISIONS. THE FAILURE OR REFUSAL OF APPLICANT TO COMPLY WITH ANY PROVISIONS OF D.C. LAW 2-38, AS AMENDED, SHALL BE A PROPER BASIS FOR THE REVOCATION OF THIS ORDER.

UNDER 11 DCMR 3103.1, "NO DECISION OR ORDER OF THE BOARD SHALL TAKE EFFECT UNTIL TEN DAYS AFTER HAVING BECOME FINAL PURSUANT TO THE SUPPLEMENTAL RULES OF PRACTICE AND PROCEDURE BEFORE THE BOARD OF ZONING ADJUSTMENT."

THIS ORDER OF THE BOARD IS VALID FOR A PERIOD OF SIX MONTHS AFTER THE EFFECTIVE DATE OF THIS ORDER, UNLESS WITHIN SUCH PERIOD AN APPLICATION FOR A BUILDING PERMIT OR CERTIFICATE OF OCCUPANCY IS FILED WITH THE DEPARTMENT OF CONSUMER AND REGULATORY AFFAIRS.

15565Order/bhs

GOVERNMENT OF THE DISTRICT OF COLUMBIA
BOARD OF ZONING ADJUSTMENT



BZA APPLICATION NO. 15565

As Acting Director of the Board of Zoning Adjustment, I hereby certify and attest to the fact that on AUG 27 1992 a copy of the order entered on that date in this matter was mailed postage prepaid to each party who appeared and participated in the public hearing concerning this matter, and who is listed below:

Sheila Kaplan, Esquire
Asst. Corporation Counsel
Mental Health Division
Saint Elizabeths Hospital
A Building, Room 308
Washington, D.C. 20032

Steven M. Schneebaum, Esquire
Patton, Boggs and Blow
2550 M Street, N.W.
Washington, D.C. 20037

Mary Lampson
1527 30th Street, N.W.
Washington, D.C. 20007

Outerbridge Horsey
1249 31st Street, N.W.
Washington, D.C. 20007

Martha M. Kendrick
2550 M Street, N.W.
Washington, D.C. 20037

Don Crockett
3070 Q Street, N.W.
Washington, D.C. 20007

Joseph Pozell
3001 R Street, N.W.
Washington, D.C. 20007

Robert A. Washington
745 Delaware Ave., S.W.
Washington, D.C. 20024

Anne Matthews-Younes
Child & Youth Services Admin.
1120 19th St., N.W.
Washington, D.C. 20036

Polly Shackleton
3232 Reservoir Road, N.W.
Washington, D.C. 20007

Jeffrey J. Kilpatrick
3320 P Street, N.W.
Washington, D.C. 20007

Lloyd Elsten
3601 T Street, N.W.
Washington, D.C. 20007

Carol Moore
1110 Vermont Avenue, N.W., #1160
Washington, D.C. 20005

James Hemphill
2901 Olive Street, N.W.
Washington, D.C. 20007

Darian Valdez
3046 R Street, N.W.
Washington, D.C. 20007